

Civil Writ Petition 13548 of 2005

Date of decision: 17.8.2006.

Gurmukh Singh

...Petitioner

Versus

The Sangrur Central Cooperative Bank
Ltd, etc.

...Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr RP Kansal, Advocate, for the petitioner.
Mr AK Jaiswal, Advocate, for the respondents.

S.S. SARON, J.

The petitioner has retired as Assistant Manager/Branch Manager from the Sangrur Central Cooperative Bank Ltd, Dirba, District Sangrur on 31.7.2004. During his service, by an order dated 2.1.1997 passed by the Manager of the Sangrur Central Cooperative Bank (Bank – for short) at the Head Office, Sangrur, he was placed under suspension. He remained under suspension till 30.6.1997. He was served with a charge sheet on 8.7.1997. Thereafter, the Manager of the Bank at the Head Office issued an order on 27.3.2000 (Annexure P1) intimating the petitioner that the Board of Directors of the Bank had imposed on the petitioner a penalty of stoppage of one increment without cumulative effect. The Manager of the Bank on 9.12.2000 (Annexure P2) on the application of the petitioner for getting pay during the suspension period informed him that the Board of Directors in their meeting have decided to treat the period of suspension

from 2.1.1997 to 1.7.1997 as leave without pay. The petitioner challenged the order imposing the penalty of stoppage of one increment without cumulative effect and also the order treating the suspension period as leave without pay before the Registrar, Cooperative Societies, Punjab. The appeal was dismissed as time barred on 25.9.2001. The petitioner then filed a revision petition before the Additional Secretary, Co-operation Punjab, Chandigarh and the matter was remanded to the Registrar, Cooperative Societies, Punjab, Chandigarh. The Additional Registrar (Credit) who heard the appeal on remand vide order dated 2.12.2002 (Annexure P3) set aside the order dated 27.3.2000 (Annexure P1) whereby the penalty of stoppage of one increment without cumulative effect had been imposed. The petitioner then made a representation on 11.10.2004 for the payment of salary for the suspension period. The District Manager of the Bank on 18.1.2005 (Annexure P4) informed the petitioner that the Board of Directors of the Bank had decided to pay him subsistence allowance for the suspension period. The petitioner, aggrieved against the said order, filed a revision petition before the Additional Registrar (D), Cooperative Societies, Punjab, Chandigarh (respondent No.3) who rejected the revision on 24.3.2005 (Annexure P5). The petitioner then served a legal notice of demand of justice on the respondents requiring them to pay him the arrears of pay for the suspension period from 2.1.1997 to 30.6.1997 along with interest @ 18% p.a. The Managing Director of the Bank, on 3.6.2005 informed the counsel for the petitioner that the revision petition of the petitioner had been dismissed on 24.3.2005 and the request for payment of subsistence allowance made by the petitioner too had been declined. It is submitted that on setting aside of the penalty of stoppage of increment

without cumulative effect, the disciplinary proceedings in its entirety would be deemed to have been initiated without any justification or basis. Therefore, the suspension period of the petitioner is to be considered as duty period for all intents and purposes.

Written statement has been filed by respondents No.1 and 2 in which the five charges in respect of which the petitioner had been charge sheeted on 8.7.1997 have been mentioned. It is, in any case, accepted that the order of stoppage of one increment without cumulative effect was ultimately set aside by the Additional Registrar (Credit), Cooperative Societies, Punjab (respondent No.3). It is submitted that the petitioner had not been paid the salary for the period of suspension in terms of order dated 9.12.2000 (Annexure P2). The said order was also under challenge before the Additional Registrar (Credit) Cooperative Societies Punjab (respondent No.3). However, it was not set aside and neither did the petitioner further challenge the order of the Additional Registrar (respondent No.3). Therefore, the petitioner could not prove that his suspension was unjustified. As such, the order dated 18.1.2005 (Annexure P4) and 24.3.2005 (Annexure P5) whereby the claim of the petitioner for the payment of subsistence allowance for the period of his suspension has been declined, are just and reasonable.

We have heard learned counsel for the parties.

The claim of the petitioner is for seeking a direction to treat the period of his suspension from 2.1.1997 to 30.6.1997 as duty period for all intents and purposes. The petitioner, as has already been noticed, was imposed the penalty of stoppage of one increment without cumulative effect vide order dated 27.3.2000 (Annexure P1). By a subsequent order

dated 9.12.2000 (Annexure P2), the Manager, Head Office of the respondent Bank informed the petitioner that the Board of Directors of the Bank in their meeting held on 30.10.2000 had decided to treat the period of suspension from 2.1.1997 to 30.6.1997 as leave without pay. Accordingly, the petitioner was informed that he cannot be paid any arrears pertaining to the period of his suspension. The petitioner filed appeals against both the orders dated 27.3.2000 (Annexure P1) and 9.12.2000 (Annexure P2) which were disposed of by the Additional Registrar (Credit), Cooperative Societies, Punjab (respondent No.3) in terms of order dated 2.12.2002 (Annexure P3) relying on the judgment of the Hon'ble Supreme Court in **Capt M. Paul Anthony v. Bharat Gold Mines Ltd and anr** 1999(2) RSJ 318 and of this Court in **PL Mehta v. State of Punjab** 1999(4) RSJ 343 in which it was held that non-payment of subsistence allowance was a violation of valuable right available to a delinquent employee and that non-payment of the same, vitiates the proceedings. Besides, it was also observed by the Additional Registrar (Credit), Co-operative Societies, Punjab (respondent No.3) in his order dated 2.12.2002 (Annexure P3) that by not paying the subsistence allowance or salary for the period of suspension and inflicting of punishment of stoppage of one increment, amount to double punishment. In the operative part of the order, however, only the order dated 27.3.2000 (Annexure P1) relating to imposition of punishment of stoppage of one increment without cumulative effect was set aside. The other order regarding non-payment of any arrears for the suspension period was not adverted to. In other words, it has not been indicated in the order dated 2.12.2002 (Annexure P3) as to whether the order conveying the decision regarding treating the suspension period as

leave without pay was set aside or had been maintained. The petitioner, in any case, was informed vide letter dated 18.1.2005 (Annexure P4) by the District Manager of the respondent-Bank that his case for payment of subsistence allowance from 2.1.1997 to 1.7.1997 had been discussed in the meeting dated 14.12.2004 of the Board of Directors. It was resolved that as the petitioner was found guilty, he could not be granted subsistence allowance. The petitioner filed a revision against the said intimation dated 18.1.2005 (Annexure P4) which has been rejected by the Additional Registrar(D) vide order dated 24.3.2005 (Annexure P5). It was observed that the Bank had already released one increment in consequence of the setting aside of the order dated 27.3.2000 (Annexure P1) relating to imposition of penalty and that the Board of Directors had decided to treat the period of suspension as leave without payment. It was further observed that if the petitioner was aggrieved by the order of the learned Additional Registrar (Credit), he could have challenged the same which he did not. Therefore, he was debarred from challenging the same in the said revision.

A reading of the order dated 2.12.2002 (Annexure P3) passed by the Additional Registrar (Credit), Cooperative Societies, Punjab (respondent No.3) in its entirety would show that the Additional Registrar (Credit) had held that the proceedings in their entirety had been vitiated. It was observed by the Additional Registrar (Credit) that the Supreme Court and this Court had held that non-payment of subsistence allowance amount to vitiating the proceedings. The said order of the Additional Registrar (Credit) is to be read in its entirety and cannot be limited to the conclusions recorded therein. The Hon'ble Supreme Court in Commissioner of Wealth

Tax v. Dr. Karan Singh and others etc., JT 1993 (2) S.C. 321 (Five Judges)

regarding interpretation of judgments of the Court held as follows:-

"The basic rules of interpreting Court judgments are the same as those of construing other documents. The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision."

.....(Emphasis added)

Therefore, an interpretation and reading of the order of the Additional Registrar (Credit) in its entirety would show that the inquiry proceedings against the petitioner have been held to be vitiated for non-payment of subsistence allowance. The suspension of the petitioner was ordered in contemplation of the departmental inquiry that was to be initiated against him. The petitioner was placed under suspension vide order dated 2.1.1997 and he remained under suspension till 30.6.1997; thereafter on 8.7.1997 a charge sheet was issued which was served on the petitioner. As such, once the departmental proceedings are held to be vitiated, the same would stand vitiated as a whole and the petitioner would be entitled to the

consequential benefits in consequence of the departmental proceedings being vitiated. He cannot be denied the benefit of salary for the suspension period as the non-payment of the subsistence allowance for the said period, is the basis and foundation for holding that the departmental proceedings were vitiated. Besides, the resolution passed by the Board of Directors of the Bank on 14.12.2004, which was conveyed to the petitioner vide letter dated 18.1.2005 (Annexure P4) resolving that because the petitioner has been considered guilty, he cannot be granted subsistence allowance is erroneous and contrary to the record. The Additional Registrar (Credit) in his order dated 2.12.2002 (Annexure P3) has held the departmental proceedings against the petitioner to be vitiated for non-payment of subsistence allowance. The proceedings, therefore, were vitiated in their entirety. As such, it cannot be said that the petitioner in fact was held guilty. Consequently, the petitioner is entitled to the payment of salary for the suspension period. However, in the peculiar facts and circumstances of the case, he is not entitled for any interest on the arrears of salary.

For the foregoing reasons, the writ petition is allowed and the petitioner would be entitled to the salary for the period he remained under suspension from 2.1.1997 to 30.6.1997 and the same will be treated as duty period. However, his claim for interest is declined. No costs.

(S.S.NIJJAR)
JUDGE

17.8.2006.
ASR

(S.S.SARON)
JUDGE